

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR - 1 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the Commission's)
Rules to Facilitate Future Development of)
SMR Systems in the 800 MHz Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8030,
RM-8029

RECEIVED

MAR - 1 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

and

Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS

TRIANGLE COMMUNICATIONS, INC.

Robert H. Schwaninger, Jr.
Brown and Schwaninger
Suite 650
1835 K Street, N.W.
Washington, D.C. 20006
202/223-8837

Dated: March 1, 1995

SUMMARY

Nextel's chairman has been quoted as extolling the virtues of spectrum ownership. Indeed, the actions taken by the Company mirror this vision, gobbling up channels wherever they might be available through the filing of thousands of applications throughout the Country. The Commission would not require much examination of its records to find several incidents where Nextel has filed for over a hundred channels to serve an area with a population of less than 30,000. Nextel has, therefore, gone more into the spectrum business than the telecommunications business. Or, more precisely, it has pioneered the spectrum/commodity trading business.

Nextel's methods are a matter of record and its history should be scrutinized before the Commission makes any decision in this proceeding. One must note, however, that despite all of its financial machinations, Nextel still has not found consumers to support ESMR. The reasons are obvious. They are the same reasons which have always existed. And nothing proposed within this proceeding can or will change the fact that ESMR is simply an undesired service.

Since the likelihood of Nextel ever achieving its sometimes claimed goals is slim, the Commission must ask the question, "what are the proposals within this docket intended to achieve, if not the facilitation of ESMR offerings?" The answer is obvious, despite the layers of rhetoric and bluster and hyperbole which have often buried the facts. The fact is that Nextel is still committed to its original goal, to obtain spectrum as a commodity for the purpose of selling its spectrum assets at a later time.

The Commission's scarce resources and the regulation of the spectrum is not intended to be employed in this manner. The agency's primary mission is to establish rules which will foster the provision of service to the public for which the public has demanded. But Nextel's mission does not include the intent to provide new services and technology to the public. Nextel's goal is clearly to employ the Commission's processes for commodity trading. For this reason, the Commission must reject these proposals as inconsistent with the goals of the agency, to bring SERVICE, not speculation in spectrum futures to the market.

TABLE OF CONTENTS

Summary	ii
Nextel's Commodity Trading	1
Conclusion	11

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAR 21 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate Future)	RM-8117, RM-8030
Development of SMR Systems in the)	RM-8029
800 MHz Frequency Band)	
)	
and)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act - Competitive)	
Bidding)	
800 MHz SMR)	

To: The Commission

REPLY COMMENTS

Triangle Communications, Inc. (Triangle), by its attorneys, hereby submits its reply to the comments filed in the above-captioned matter. Triangle feels that the proposals outlined in the Further Notice of Proposed Rule Making should not be adopted. In support of its position, Triangle states the following:

Nextel's Commodity Trading

Nextel's chairman has been quoted as extolling the virtues of spectrum ownership. Indeed, the actions taken by the Company mirror this vision, gobbling up channels wherever they might be available through the filing of thousands of applications throughout the Country. The Commission would not require much examination of its records to find several incidents where Nextel has filed for over a hundred channels to

serve an area with a population of less than 30,000. Nextel has, therefore, gone more into the spectrum business than the telecommunications business. Or, more precisely, it has pioneered the spectrum/commodity trading business.

Nextel's methods are a matter of record and its history should be scrutinized before the Commission makes any decision in this proceeding. Those methods are illustrative of the false premises upon which this proceeding and the proposals contained within are based.

The Company began as Fleet Call, Inc. and its strategy was acquisition from the beginning. It targeted certain urban markets and made offers to local operators to sell out their analog SMR businesses. Many operators sold and many refused those offers. After a time, the Company had amassed a block of spectrum in several U.S. cities. It concurrently picked up a sizeable customer base, but the revenue produced from those companies was insufficient to continue the strategy. Therefore, bank financing was employed and additional monies were raised to continue the strategy.

In and about 1991-92, the Company attempted to sell its holdings to Bell South.¹ The idea was that wireless technology was experiencing increasing demand and that Bell South could employ the valuable 800 MHz spectrum acquired by Nextel to increase its presence in this booming market. Unfortunately, the deal did not and could not close

¹ This is confirmed via conversations with representatives of Bell South.

due to the Commission's continued bar on operation of SMR facilities by wireline entities. The earliest "buy-and-flip" strategy had failed.

The inability to close the Bell South deal put Nextel in a precarious position. It was still highly leveraged and its revenues would not keep up with its need to service a large debt load. Drastic times call for bold measures, hence, its request for waiver to create the service now referred to as ESMR.²

As the Commission may recall, the request for waiver was not welcomed with open arms. Some members of the Commission appreciated the ramifications of allowing prolonged construction dates and tolled loading criteria. Accordingly, the terms of the granted waiver were limited. Unfortunately, the strict language of the waiver was not followed in the later processing and licensing of Nextel's facilities. Instead, the nose of camel was firmly within the tent and Nextel pushed the limits of the waiver well beyond the plain language contained therein.³ The result was that Nextel's efforts were doubled and redoubled in acquiring spectrum throughout the Country, with little consideration

² The roster of luminaries appearing at the signature lines of that request speaks volumes about the importance which Nextel attached to its waiver request. Had it failed, Nextel's position in the market would likely have shrunk rapidly and it would be little more than a curious footnote today.

³ Efforts to curtail the abuse of the Commission's directions contained within the waiver fell on deaf ears within the Private Radio Bureau. The interpretation of the terms of the waiver by members of the Bureau staff were challenged time and again, without substantial results. Therefore, the Bureau mistakenly assisted Nextel in creating its spectrum warehouses to the detriment of many a protesting analog SMR operator.

given to what, if any, viable service might actually be provided with the acquired channels.

Buoyed by its success in obtaining its waiver, Nextel went public and its stock was snatched up by many who believed that Nextel was on a roll. Indeed it was and the stock price soared into the 50s. The coffers now filled, Nextel continued its aggressive techniques, approaching analog operators in major areas and employing dominating tactics to convince local businesses to sell to Nextel.⁴ The Company expanded its claims beyond the original six-city system upon which the waiver had been based and now stated that it intended to construct a seamless ESMR network across the United States, delivering wireless services to over 90% of the public in record time.

These were the salad days of Nextel. Strategic partners lined up to take an equity stake in this bold, new upstart. Its stock was trading high, despite early profit taking by some large stakeholders, including foreign investors.⁵ The Company generated application after application, snatching up more channels at an ever increasing rate.

⁴ That local operators were intimidated into selling channels to Nextel is confirmed via an interview with Morgan O'Brien that appeared in the Wall Street Journal.

⁵ In its deliberations of these proposals, the Commission should recall that it has not granted Nextel's waiver to allow it greater than mandated foreign ownership. Since these proposals would most benefit Nextel, the Commission should first complete its review of that matter prior to making any decision in this proceeding. If Nextel's waiver is denied, it would not be eligible to operate as a CMRS and these proposals' greatest supporter might be compelled to oppose these proposals to survive as an analog dispatch carrier.

Meanwhile, other entities entered the market with the intention of duplicating Nextel's success. CenCall, Inc.; Dispatch Communications, Inc.; Power Spectrum, Inc. and Dial Call, Inc. among others, rushed to take advantage of the newest craze in telecommunications.⁶ Each of these companion entities consolidated channels in defined geographic areas, e.g. Dial Call concentrated on the Southeastern United States while Power Spectrum focused on the Northeast. At the same time, Motorola entered into negotiations with many of these entities to sell its inventory of SMR channels to willing buyers looking to dominate particular regions, eventually selling much of its inventory for equity positions in the carriers.⁷

In the market, some degree of licensing chaos ensued. Local operators were precluded from obtaining additional spectrum in areas where ESMR operators had filed for enormous blocks of spectrum. Increased uses of short-spacing gobbled up every inch of available service area, thereby reducing the service area of existing facilities. Aggressive marketing techniques were employed as ESMR operators thirsting for revenues to back their bold plans lured analog customers away from traditional carriers.

⁶ It is more than coincidence that two of the other ESMR entities's Chief Operating Officers were close colleagues of Morgan O'Brien and that these entities were able to sell their companies to Nextel before the market bottomed out.

⁷ Motorola's equity positions also created a de facto sole source supplier for equipment to create ESMR services, thereby chilling the SMR manufacturing market at the same time that Nextel was chilling the growth of local and regional SMR systems.

Although some degree of spectrum shortage had existed in the major markets, now minor markets were also suffering this fate. Wait list areas sprung up where the likelihood of such problem existing previously had been quite remote. But the rush was on to grab channels now, fast before the inventory was so depleted through speculation in ESMR that future growth might be impossible. Channels, as a commodity, had turned into a big money game.⁸

Further exacerbating the problem was the effect of application or licensing "mills" which promised investors get-rich-quick schemes based on the overheated nature of the marketplace. These entities filed for channel after channel with little opportunity or notion that the systems would ever be built. Thousands of channels would be put on ice by these operations, removing each of those channels from the valuable spectrum pool on which legitimate operators had previously relied for growth.

The most disturbing element at this time was the lack of one, single, viable ESMR system. Literally billions of dollars had changed hands without producing a single system for the provision of service to the public. The vast spectrum holdings of Nextel and others had failed to produce a viable service, despite the lofty claims and promises. The effect of failed beta testing of the systems began to be felt in stock prices,

⁸ The Commission comes too late to the auction table in the SMR industry. The auctions have already been held in numerous board rooms and contract negotiations. There is little to nothing left to sell or buy that is worthy of purchase by anyone other than Nextel for reasons explained herein.

which began to inch downward for the publicly traded ESMR systems. Investors slowly began losing confidence and sources for strategic partners evaporated. MCI walked, Comcast backed away, and other large telecommunications companies turned their backs on ESMR and began to concentrate on PCS, which appeared then and now to hold more promise.

Time passed and still no ESMR could logically claim success in the delivery of a service which the public would accept. Pricing was a problem as ESMR's high capitalization rates demanded a higher usage charge from subscribers. Service was still a problem, including the quality of voice transmissions and the battery life of associated subscriber equipment. However, the greatest problem was that the ESMR operators were attempting to foist an interconnected service onto a primarily dispatch market. Dispatch customers remained faithful to their needs and eschewed the offerings as too expensive and unnecessary. Those that required interconnected service of the type offered by ESMR operators were already employing cellular systems and could not be lured in sufficient numbers to justify the high cost of constructing ESMR systems. The other byproduct was high churn rates as customers lured to ESMR would jump and return to traditional analog SMR service providers to receive reliable dispatch services or would go to cellular to enjoy the benefits of that more mature technology.

More months passed and still Nextel could not demonstrate that its ESMR concept had found a place in the market. Additional technical problems arose that demonstrated

that the ESMR systems were quite vulnerable to co-channel and adjacent channel interference, despite Nextel's earlier claims that the system would perform well in the existing SMR environment. Nextel's stock was in a free fall and continued to plummet. It had already purchased most of its competitors and those mergers continued to breathe excitement into its financial offerings, but OneComm, Inc. and Dial Call, Inc. still remained, with their huge reserves of spectrum. But Nextel's stock prices had dropped so far as to place in jeopardy its proposed purchase of these last two major stakeholders in ESMR.

Recently Nextel has been able to overcome the problems it had in obtaining OneComm and Dial Call, but not without substantial wrangling and reductions in offerings to make the numbers come out right. Today, Nextel is an SMR giant, holding thousands of channels throughout the United States with little, if any, true competition in the ESMR market.

One must note, however, that despite all of its financial machinations, Nextel still has not found consumers to support ESMR. The reasons are obvious. They are the same reasons which have always existed. And nothing proposed within this proceeding can or will change the fact that ESMR is simply an undesired service. Analog dispatch service, the kind that Nextel provides to over 95% of its customer base, is still the service which has built and maintained the SMR industry. The proposals offered cannot change the price elasticity in the market or customer perception or the technical problems

suffered by faulty design or any of the many other problems suffered by companies which claim dependence on making ESMR a viable telecommunications offering.

It stretches credulity to believe that Nextel is unaware of this fact. One need only read its most recent comments to see that Nextel has changed its emphasis from ESMR services to traditional SMR services to bolster its claims. Although it is still painting blue sky about the wondrous offerings that it might make in the future through its ESMR plans, by now it should be obvious to all informed persons that Nextel's plans will not include the construction of a nationwide ESMR service, even if provided the opportunity. Due to the paucity of demand for ESMR services, construction simply does not make good business sense. The Commission need go no farther than the stock market to confirm this perception.

Since the likelihood of Nextel ever achieving its sometimes claimed goals is slim, the Commission must ask the question, "what are the proposals within this docket intended to achieve, if not the facilitation of ESMR offerings?" The answer is obvious, despite the layers of rhetoric and bluster and hyperbole which have often buried the facts. The fact is that Nextel is still committed to its original goal, to obtain spectrum as a commodity for the purpose of selling its spectrum assets at a later time.

Nextel's long held belief that spectrum as a commodity for the purpose of trading in the marketplace has been the guiding credo for its actions. The proposals in this

docket simply attempt to conform and improve that commodity, by creating contiguous blocks which are far more easily traded in the market. Nextel has come to recognize that its vast spectrum warehouses are filled with odd lots, remnants, and tainted goods. As Nextel has short-spaced, so too have others against its channels. As Nextel has bought and sold to gain geographic advantages, so have local analog operators between Nextel's system designs. The result is that Nextel is holding a lot of spectrum on its books, but the assets are not of a quality that might attract the highest offer when sold. To achieve that kind of price, the spectrum must be contiguous and geographically concentrated.

To achieve its ultimate goal, Nextel comes before the Commission requesting "regulatory parity" with cellular and PCS operations. Its request is disingenuous. Nextel does not seek regulatory parity. Nextel seeks the intended byproduct of the Commission's adoption of parity, the adoption of rules that will enable it to conform its spectrum reserves into neat blocks for future sale.

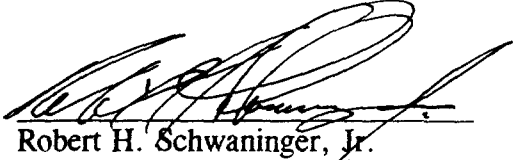
Regardless of the audacity of Nextel's request which would lessen competition in the marketplace, create a hazardous and undue burden on existing analog SMR operators, provide no service for which demand exists or is likely to exist, and would benefit only Nextel to the detriment of this vital industry; perhaps the most compelling reason for rejection of the proposals is the unstated, but unmistakable, reason for Nextel's bringing these proposals in the first instance. Nextel simply wants to engage in commodity trading.

The Commission's scarce resources and the regulation of the spectrum is not intended to be employed in this manner. The agency's primary mission is to establish rules which will foster the provision of service to the public for which the public has demanded. But Nextel's mission does not include the intent to provide new services and technology to the public. Nextel's goal is clearly to employ the Commission's processes for commodity trading. For this reason, the Commission must reject these proposals as inconsistent with the goals of the agency, to bring SERVICE, not speculation in spectrum futures to the market.

Conclusion

For all the foregoing reasons, Triangle respectfully requests that the Commission reject the proposals outlined in the above-captioned Further Notice of Proposed Rule Making.

Respectfully submitted,
TRIANGLE COMMUNICATIONS, INC.

By 
Robert H. Schwaninger, Jr.

Brown and Schwaninger
Suite 650
1835 K Street, N.W.
Washington, D.C. 20006
202/223-8837

Dated: March 1, 1995

Certificate of Service

I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Counsel for:
Pittencrief Communications, Inc.
E.F. Johnson Company
Gulf Coast Radio Fone
Deck Communications, Inc.
Nodak Communications
Wiztronics, Inc.
Raserco, Inc.
Vantek Communication, Inc.
Southern Minnesota Communications
Brandon Communications, Inc.
Dakota Electronics
Bis-Man Mobile Phone, Inc.
Rayfield Communications
B & C Communications
Radio Communications Center
Keller Communication, Inc.
Don Clark Radio Communications
Pro-Tec Mobile Communications
Automated Business Communication
Morris Communications
Nielson Communications
E.T. Communications Company
Bolin Communications System
Diamond "L" Industries, Inc.

Mark J. Golden
Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jennifer Street, NW
Suite 300
Washington, DC 20015

Counsel for:
Personal Communications I

Young & Jatlow
2300 N Street, N.W.
Suite 600
Washington, D.C. 20037

Counsel for:
Ericsson Corporation

Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W.
Washington, D.C. 20036

Counsel for:
Fisher Communications, Inc.
American Mobile Telecommunications Assoc.

Motorola, Inc.
1350 Eye Street, N.W.
Suite 400
Washington, D.C. 20005

Wiley Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Counsel for:
Robert J. Butler

Kelly & Povich, P.C.
1101 30th St., N.W.
Suite 300
Washington, D.C. 20007

Counsel for:
Advanced Mobilecomm, Inc.

Mintz, Levin, Cohn, Ferris, Glovsky, &
Popeo, P.C.
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Counsel for:
McCaw Cellular Communications, Inc.

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW
Suite 300
Washington, DC 20554

Counsel for:
The SMR Small Business Coalition

William R. Miller
Russ Miller Rental
3620 Byers Avenue
Fortworth, Texas 76107

Joel Freedman
Vice President, General Counsel
Dial Call Communications
1355 Peachtree Street, Suite 755
Atlanta, GA 30309

Mark Lindquist
Communications Center, Inc.
Box 1034
Pierre, SD 57501

John D. Pellegrin
1140 Connecticut Avenue, N.W.
Suite 606
Washington, DC 20036

Counsel for:
American SMR Company

Duncan C. Kennedy
Genesee Business Radio
992 Cater Street
Rochester, NY 14621-1910

Meyer, Faller, Weisman
& Rosenberg, P.C.
Allan S. Tilles
4400 Jenifer Street, NW
Suite 380
Washington, DC 20015

Counsel for:
Parkinson Electronics

Ross & Hardies
888 16th Street, NW
Suite 400
Washington, DC 20006

Counsel for:
SMR Won

Fisher, Wayland, Cooper,
Leader & Zargoza, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20006

Keller & Heckman
1001 G Street, NW
Suite 500 West
Washington, DC 20001

Counsel for:
The Southern Company
DCL Associates
American Petroleum Institute
US Sugar Corporation

Lewis H. Goldman
1850 M Street
Suite 1080
Washington, DC 20036

Counsel for:
Douglas L. Bradley

McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, NW
Washington, DC 20036

Bryan Cave
700 Thirteenth Street, NW
Suite 700
Washington, DC 2005-3960

Counsel for:
CenCall, Inc.

Timothy P. Haley
Centennial Telecommunication
130 N. Bond Street
Suite 201
Bel Air, MD 21014

Latham & Watkins
1001 Pennsylvania Ave., NW
Washington, DC 20004

Counsel for:
Vanguard Cellular Systems
Raymond B. Grochowski

Charles C. Townsend
Atlantic Cellular Company
15 Westminster St., Suite 830
Providence, RI 02903

Raymond J. Stone
American Industrial & Marine Electronics, Inc.
P.O. Box 715
Dover, Delaware 19901

John E. Sonneland
Courtesy Communications
W. 801 Fifth Ave.
Suite 410
Spokane, WA 99204

Michael R. Carper
4643 South Ulster Street
Suite 500
Denver, CO 80237

Morrison & Foerster
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, DC 20006

Industrial Telecommunications Association, Inc.
Alliance of Private 800/900 MHz Licenses
Frederick J. Day, Esq.
1110 North Glebe Road
Suite 500
Arlington, VA 22201-5720

Cellular Telecommunications
Industry Association
Michael F. Altschul
Vice President, General Counsel
1250 Connecticut Avenue, N.W.
Suite 200
Washington, DC 20036

Association of Public-Safety
Communications Officials International, Inc.
Wilkes, Artis, Hedrick & Lawe, Chartered
1666 K Street, N.W.
Suite 1100
Washington, DC 20006

Council of Independent Communication Suppliers
Frederick J. Day
Mark E. Crosby
1110 N. Glebe Road
Suite 500
Arlington, VA 22201-5720

Organization for the Protection and
Advancement of Small Telephone Companies
Lisa M. Zgina, General Counsel
21 Dupont Circle, N.W.
Suite 700
Washington, DC 20036

Dru Jenkinson, Inc.
Bessozzi, Gavin & Cravn
1901 L Street, N.W.
Suite 200
Washington, DC 20036

National Telephone Cooperative Assoc.
David Cosson
2626 Pennsylvania Ave., N.W.
Washington, DC 20037

Spectrum Resources, Inc.
A.C. Miller
307 Annandale Road
Suite 101
Falls Church, VA 22042

Chadmoore Communications
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, DC 20005-3919

Palmer Communications, Inc.
Marianne H. Lepara
12800 University Drive
Suite 500
Ft. Meyers, FL 33907-5333

Total Comm, Inc.
William C. Wyatt, President
2701 N. Van Buren
Enid, OK 73703

Utilities Telecommunications Council
Jeffrey L. Sheldon, General Counsel
1140 Connecticut Ave., N.W.
Suite 1140
Washington, DC 20036

U.S. Small Business Administration
Jere W. Glover, Esq.
409 3rd Street, S.W.
Washington, DC 20416

Communications Unlimited, Inc.
Lewis H. Goldman
1850 M. Street, N.W.
Suite 1080
Washington, DC 20036

Nextel Communications, Inc.
Robert S. Foosner
800 Connecticut Avenue, N.W.
Suite 1001
Washington, DC 20006

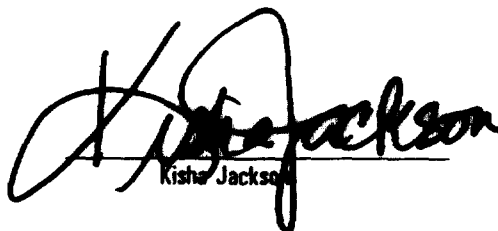
Telcelular de Puerto Rico, Inc.
Law Offices of Richard S. Myers
1030 15th Street, N.W.
Suite 906
Washington, DC 20006

Freedom Mobile Communication, Inc.
Jerome M. Freund, President
14 Ray Street
Beaver Falls, PA 15010

Delta Communications, Inc.
Kimo C. Chun, Director
2646 Kilihau Street
Honolulu, HI 96819

Southwestern Bell
Linda M. Hood
173330 Preston Road
Suite 100A
Dallas, TX 75252

Associated Public Safety Communications Officer, Inc.
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W.
Washington, DC 20006



Kisha Jackson